

REMARKS

By this amendment, Applicants have amended claims 6-7, 9, 13, and 18-20. As a result, claims 1-20 remain pending in this application. These amendments are being made to facilitate early allowance of the presently claimed subject matter. Applicants do not acquiesce in the correctness of the objections and rejections and reserve the right to pursue the full scope of the subject matter of the original claims, or claims that are potentially broader in scope, in the current and/or a related patent application. Reconsideration in view of the following remarks is respectfully requested.

In the Office Action, the Office rejects claims 11-16 under 35 U.S.C. § 101 as allegedly being directed to non-statutory subject matter. In particular, the Office alleges that “it appears that the system would reasonably be interpreted... as software, *per se*, failing to be tangibly embodied or include any recited hardware as part of the system.” Office Action, paragraph 4. However, Applicants note that the specification clearly shows and describes “an illustrative system 10 for managing system resources”, which includes both hardware (e.g., image server 12) and software (e.g., resource management system 28). See, e.g., specification, paragraph 0018 and FIG. 1. To this extent, Applicants respectfully submit that the specification clearly shows and describes an illustrative “system for managing resources of a system”, as recited in the preamble of claim 11, as including both hardware and software. As a result, Applicants respectfully submit that the specification clearly shows and describes the system of claims 11-16 as including hardware. In light of the above, Applicants respectfully request withdrawal of the rejection of claims 11-16 as allegedly being directed to non-statutory subject matter.

Further, the Office rejects claims 6 and 18-20 under 35 U.S.C. § 112, second paragraph as allegedly being indefinite. By this response, Applicants have amended claims 6 and 18-20 to clarify the claimed inventions. As a result, Applicants respectfully request withdrawal of the rejection of claims 6 and 18-20 as allegedly being indefinite.

Further, the Office rejects claims 1-20 under 35 U.S.C. § 103(a) as allegedly being unpatentable over U.S. Patent No. 6,457,008 (Rhee). Because the Office fails to establish a *prima facie* case of obviousness, Applicants respectfully request withdrawal of the rejections of claims 1-20 for the following reasons.

In support of its rejection of claim 1, the Office cites col. 1, lines 17-20 of Rhee, which state that “[w]henever more than one process or user at a time requires one of the computer’s resources, the resource must be shared between the requesting entities. Thus, some form of resource allocation and scheduling is needed.” Rhee, col. 1, lines 17-20. Applicants respectfully submit that this portion of Rhee, and Rhee in its entirety, fails to teach or suggest the invention of claim 1.

For example, the Office fails, *inter alia*, to show that Rhee teaches or suggests determining an attribute of the system as in claim 1. In the rejection, the Office states that the above-quoted portion of Rhee supports the proposition that “the allocation and scheduling is performed on factors other than simply just demand”. Office Action, paragraph 9. However, Applicants note that nowhere in the portion of Rhee cited by the Office does Rhee teach or suggest such a proposition. As a result, should the Office maintain this rejection, Applicants request that the Office provide additional explanation as to the Office’s interpretation of this portion of Rhee.

Even if, *arguendo*, the Office’s interpretation is correct, Applicants note that such an interpretation is not sufficient to teach or suggest the claimed determining an attribute of the system. In particular, the Office merely alleges that Rhee supports performing “the allocation and scheduling... on factors other than simply just demand”. Office Action, paragraph 9. However, the invention of claim 1 determines an attribute of the system, a particular type of factor, not just any factor other than simply just demand. To this extent, there are numerous types of factors. For example, Rhee discusses allocating a period of time to each requester and/or associating varying priorities to groups of entities, which can be used to allocate a computer’s resources. See, e.g., Rhee, col. 1, lines 21-33.

Further, the Office fails, *inter alia*, to show that Rhee teaches or suggests determining a demand for a service as in claim 1. The Office acknowledges that Rhee does not explicitly teach such a feature. Office Action, paragraph 10. However, the Office states that “Rhee does teach that the busier the system, (i.e. more users), leads to greater demand on each resource (col 1 lines 14-16).” *Id.* However, Rhee merely discusses a number of users using a system, and not a demand for a service as in claim 1. Further, Applicants note that a number of users does not directly correlate with demand for a resource. For example, a few users may be performing processor-intensive operations causing a high demand on the processor (with few users), but low demand on other resources, such as I/O devices. Similarly, many users may be performing I/O intensive operations, which do not require a lot of processing, therefore causing a high demand on I/O devices, but low demand on the processor.

Still further, the Office attempts to map users of a system with demand for a service. In particular, the Office states that “[i]t would have been obvious... to include [sic] that the demand

for a resource is a result of the demand for the service.” Office Action, paragraph 10. However, Applicants note that a system can provide numerous services (as illustrated by claim 2), perform other functionality, and/or the like, each of which can impact the demand for a particular resource. As a result, demand for the service does not necessarily directly correlate to the demand for the resource as alleged by the Office. Further, a particular service may not require a substantial amount of a particular resource. In this case, the resource may experience a low demand while the demand for the service is high.

In view of each of the above-stated reasons, either alone or in combination, Applicants respectfully request withdrawal of the rejections of claim 1 and claims 2-6, which depend therefrom, as allegedly being unpatentable over Rhee.

With further respect to claim 2, the Office alleges that a second “entity” teaches the at least one other service of claim 2. However, Applicants note that a “service” is a term of art that refers to the functionality derived from a particular software program. See, e.g., service, TechEncyclopedia, The Computer Language Company, available at <http://www.techweb.com/encyclopedia/defineterm.jhtml?term=service> (accessed 17 July 2007). To this extent, multiple entities fail to teach or suggest the at least one other service of claim 2. As a result, Applicants again respectfully request withdrawal of the rejection of claim 2 as allegedly being unpatentable over Rhee.

With further respect to claim 6, the Office alleges that discussion of a resource scheduler allocating execution time among various processes and jobs allegedly discloses determining a load on an image server in the system and using the load in provisioning a resource as in claim 6. However, Applicants submit that the cited portion of Rhee appears to be unrelated to the claimed

feature. As a result, Applicants again respectfully request withdrawal of the rejection of claim 6 as allegedly being unpatentable over Rhee. In the alternative, should the Office maintain the rejection, Applicants respectfully request further information with respect to how the Office is interpreting the claimed feature and the cited portion of Rhee. In particular, Applicants are unclear as to what portion of Rhee the Office alleges corresponds to the “load on an image server in the system” in claim 6.

With respect to claim 7, the Office fails to establish a *prima facie* case of obviousness in rejecting the claim. In particular, the Office relies on its rejections of claims 1-6. However, Applicants note that claim 7 is not commensurate in scope with any of claims 1-6. For example, claim 7 includes determining a set of attributes of the system, wherein the set of attributes comprises: a load on an image server, a load on a network used by the image server and a software server, and a second demand for at least one other service sharing the system. In contrast, claims 1-6 only require determining a single attribute of the system. The Office presents no argument in rejecting claims 1-6 that Rhee teaches or suggests determining each of the set of attributes in claim 7 in combination, let alone using the set of attributes together with a first demand for a service in provisioning a resource for the service as in claim 7. As a result, Applicants respectfully request withdrawal of the rejections of claim 7 and claims 8-10, which depend therefrom, as allegedly being obvious in view of Rhee. Alternatively, Applicants respectfully request that the Office provide a particular reason why the Office believes Rhee teaches or suggests such a modification proposed by the Office.

With respect to claims 11 and 17, Applicants note that the Office relies on its interpretation of Rhee as allegedly teaching all the features of claim 1. To this extent, Applicants

hereby incorporate the arguments presented above for claim 1. As a result, Applicants request withdrawal of the rejections of claims 11 and claims 12-16, which depend therefrom, and claim 17 and claims 18-20, which depend therefrom, as allegedly being unpatentable over Rhee.

Applicants submit that each of the pending claims is patentable for one or more additional unique features. To this extent, Applicants do not acquiesce to the Office's interpretation of the claimed subject matter or the reference used in rejecting the claimed subject matter. Additionally, Applicants do not acquiesce to the Office's modifications of the reference or the motives cited for such modifications. These features and the appropriateness of the Office's modifications have not been separately addressed herein for brevity. However, Applicants reserve the right to present such arguments in a later response should one be necessary and/or in a related patent application, either of which may seek to obtain protection for claims of a potentially broader scope.

In light of the above, Applicants respectfully submit that all claims are in condition for allowance. Should the Examiner require anything further to place the application in better condition for allowance, the Examiner is invited to contact Applicants' undersigned representative at the number listed below.

Respectfully submitted,

/John LaBatt/

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